

PLANNING COMMISSION MINUTES

JULY 5, 2007

CASE NO. 8571

Change in zoning from R-1 Single-family Residential to EZ-1 Enterprise Zone and associated waivers on property located at 5808 Johnsontown Road (Tax Block 1047, Lot Number 925), containing 23.7 acres and being in Louisville Metro.

Project Name:	Verus Distribution Center
Owner(s):	Walter V. and Rita Mahoney 9008 Mahoney Drive Louisville, KY 40258
Applicant:	Chris Thieneman, LLC 4901 Fern Valley Road Louisville, KY 40219
Attorney:	Paul B. Whitty Greenebaum, Doll & McDonald PLLC 3500 National City Tower Louisville, KY 40202
Engineer/Designer:	Ann Richard Land Design & Development, Inc. 503 Washburn Avenue Suite 101 Louisville, KY 40222
Existing Use:	Vacant
Proposed Use:	Office/warehouse & distribution
Form District:	Suburban Workplace
Project Size/Area:	23.7 acres
Jurisdiction:	Louisville Metro
Council District:	14 – Robert Henderson
Staff Case Manager:	Kristen Millwood, Planner II

Notice of this public hearing appeared in **The Courier Journal**, a notice was posted on the property, and notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicants.

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

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The following spoke in favor of this request:

Paul B. Whitty, Greenebaum, Doll & McDonald PLLC, 3500 National City Tower,
Louisville, KY 40202

Ann Richard, Land Design & Development, Inc., 503 Washburn Avenue Suite
101, Louisville, KY 40222

Tom Theobald, 3815 River Crossing Suite 100, Indianapolis, IN 46240

The following spoke in opposition:

No one spoke.

The following spoke neither for nor against:

No one spoke.

Agency Personnel:

Kristen Millwood, Planner II

AGENCY TESTIMONY:

Kristen Millwood presented the case and showed a Power Point presentation that included maps and photos of the site and the surrounding area (see staff report for verbatim presentation.) She mentioned that two **binding elements** were requested by Louisville Metro Transportation, to which the applicant has agreed:

There shall be no direct access to Johnsontown Road until roadway improvements are complete by Metro Public Works to provide a three-lane section along the property frontage.

The developer shall contribute \$12,600 for Metro road improvements.

Ms. Millwood said she has added an **amendment to those binding elements** stating that the \$12,600 for Metro road improvements should be paid prior to construction approval by Public Works.

SUMMARY OF TESTIMONY OF PROPONENTS:

4:55:39 Paul Whitty, the applicant's attorney, showed a site plan and pointed out the areas where the project was encroaching into the landscape

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buffer, and also referred the Commissioners to the booklet which fully described the project. He questioned the need to enhance the landscape buffer in some areas, but recommended enhancing the landscaping in others. He asked if the applicant could work with staff landscape architect on this. He agreed to the additional binding elements, and also staff's amendment regarding the \$12,600 contribution to Metro road improvements. He explained that this is "the last piece of" the Riverport project, and the land use in this area has changed to such an extent that rezoning this property is appropriate.

5:00:38 Commisisoner Wells-Hatfield asked if the applicant would irrigate the landscaping along Johnsontown Road and in the areas where the landscaping would be enhanced. Mr. Whitty said the applicant would be willing to do so and would make that a binding element.

5:01:17 Commissioner Hamilton asked about the boundaries of the CID land. Mr. Whitty pointed out the area on a site map.

5:02:32 Commissioner Wells-Hatfield and Mr. whitty discussed truck traffic, in light of the future expansion of Johnsontown Road. They also discussed the possible removal of an old fence that separates the applicant's property from the CID land.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke.

SUMMARY OF TESTIMONY OF THOSE NEITHER FOR NOR AGAINST:

No one spoke.

REBUTTAL:

There was no rebuttal, since no one spoke in opposition.

An audio/visual recording of the Planning Commission hearing related to this case is available in the Planning and Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the July 5, 2007 proceedings.

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In a business session subsequent to the public hearing on this request, the Commission took the following action.

Zoning

On a motion by Commissioner Howard, the following resolution was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that a zone change from R- 1 to EZ- 1. and waiver are requested for a 23. 7 acre tract located at 5808 Johnsontown Road to permit offices and a warehouse where the Subject Property is surrounded on three sides by a densely wooded tract zoned R- 1 owned by Jefferson County, Kentucky as one of the former Community Improvement District properties utilized for flood control purposes, and to the north by the EZ- 1 zoned Riverport Development and the waiver is requested to allow a reduction of the required perimeter landscape buffer; and

WHEREAS, the Commission further finds that, based upon the staff reports, the Applicants ' submittals and public hearing testimony, the zone change is appropriate because the proposal complies with the requirements of KRS 100.213 , as major changes of an economic and social nature have subsequently altered the basic character of the area making the current zoning less appropriate and the proposed zoning more appropriate and because the proposal is in compliance with Cornerstone 2020, the Comprehensive Plan for Louisville and Jefferson County as outlined below; and

WHEREAS, the Commission further finds that, based upon the staff reports, the Applicants' submittals and public hearing testimony, the proposal complies with Policy B. 10 of Community Form/Land Use Guideline 1 as the Subject Property is located at the intersection of Johnsontown Road and Trade Port Drive in an existing mixed use area that includes residential and industrial land uses in close proximity where land uses in the area have become increasingly industrial, and properties formerly zoned for residential use are being used for industrial purposes, and the character of the area is predominantly industrial due to the development of Riverport to the north; and

WHEREAS, the Commission further finds that the proposal complies with Policies 3. 3.4 3.17 3.21, and 3.24 of Community Form/Land Use Guideline 3 because the proposed use of the Subject Property is in keeping with the existing pattern of development in the area and will not result in an isolated industrial site since the adjacent industrial uses at Riverport are zoned EZ and are located within the Suburban Workplace Form District; and lighting will be installed

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primarily for security purposes at the entrances to the site, and on the office-warehouse building and will be directed down and away from residential properties and will otherwise comply with the requirements of the Land Development Code; and

WHEREAS, the Commission further finds that landscape buffer areas will be installed at the perimeter property lines where the Subject Property abuts the vacant flood control property in order to further mitigate potential impacts of the proposed use, and the proposed uses are compatible with the industrial areas to the north and are well buffered to the south, west and east and the proposed use of the Subject Property is not an intense manufacturing use, but a single office-warehouse with landscape buffer areas and vacant, heavily wooded tracts unsuitable for development separating the Subject Property and nearby residential uses; and

WHEREAS, the Commission further finds that the proposal conforms with Policies 7. and 7.2 of Mobility/Transportation Guideline 7 because the Applicants anticipate that the trips per day associated with the warehouse facility are likely to be spread throughout the day, and will not cause a significant traffic impact on the residences to the east since truck traffic will take the Greenbelt Highway and the Gene Snyder Freeway and Johnsontown Road and Trade Port Drive are currently heavily used by traffic associated with area industrial uses, including semi-tractor trailers, and the proposal will not introduce vehicle types that do not currently use the network of streets in the area, and significant improvements to the curve on J ohnsontown Road to the north of the site are proposed in the form of additional pavement width (12' from center line) and 6' to 8' wide shoulders along site frontage as well as dedication of additional right-of-way such that these improvements will facilitate the movement of truck traffic in the area and increase safety; and

WHEREAS, the Commission further finds that the proposal conforms with Policy 9. 1 of Mobility/Transportation Guideline 9 because sidewalks are proposed for the entire length of the site adjacent to Johnsontown Road which are tied to internal walkways on the site; and

WHEREAS, the Commission further finds that the proposal conforms with all applicable policies of Livability/Environment Guideline 10 because storm water from the site will be directed east and west to drain into Mill Creek and Black Pond Creek; and

WHEREAS, the Commission further finds that the proposal conforms with all applicable policies of Livability/Environment Guideline 11 because the Subject

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Property does not contain a blueline stream and only a small portion of the Subject Property is located in the 100 year flood plain, as shown on FEMA FIRM map 21111CO140 D; and

WHEREAS, the Commission further finds that the proposal conforms with all applicable policies of Livability/Environment Guideline 12. because as stated in a letter dated 12/12/07, from Tom Pinto, Technical Coordinator for the Louisville Air Pollution Control District ("APCD"), the proposal will not have an adverse air quality impact on the National Ambient Air Quality Standard for carbon monoxide; and

WHEREAS, the Commission further finds that the proposal conforms with all applicable policies of Community Facilities Guideline 14 because sanitary sewer service is available at the site, domestic water service will be provided by the Louisville Water Company, and the Applicants will install any necessary water system improvements needed to service the Subject Property; and

WHEREAS, the Commission further finds that the proposal conforms with Policy 15. 9 of Community Facilities Guideline 15 because the Subject Property will receive fire protection from the Pleasure Ridge Park Fire Protection District; and

WHEREAS, The Commission finds that the proposal has received preliminary approval from Louisville Metro Department of Inspections, Permits and Licenses, Louisville Metro Department of Public Works, and the Metropolitan Sewer District; and

WHEREAS, The Commission finds the proposal to be in conformance with all other applicable guidelines of the Comprehensive Plan; now, therefore, be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the legislative council of the Louisville/Jefferson County Metro Government that the change in zoning **from R-1 Single Family Residential to EZ-1 Enterprise Zone** on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Ernst, Carlson, Storm, Wells-Hatfield, Abstain, Howard, and Hamilton.

NO: No one.

NOT PRESENT: Commissioners Fleischaker, Blake and Queenan.

ABSTAINING: No one.

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Waiver

On a motion by Commissioner Howard, the following resolution was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that a landscape waiver is requested from the requirement of LDC 5. 5.4.B.1 to allow drive lanes and parking area pavement to encroach into portions of the 50' landscape buffer areas adjacent to the R- 1 zoned property as well as to eliminate the required 6' berm and 3' screen; and

WHEREAS, based upon the staff reports, the Applicants' submittals and public hearing testimony, the Commission finds that the waiver will not adversely affect adjacent property owners because the buffer, berm and screen would be adjacent to a large R- 1 zoned wooded tracts owned by Metro Louisville which is entirely in the flood plain and ownership had been in a now defunct county agency (the Community Improvement District) which held property for flood control purposes and contains Black Pond Creek on the east and Mill Creek to the west and because across Johnsontown Road to the northwest are industrial uses and east of Black Pond Creek are the nearest homes along Aristedes Drive which have large deep rear yards and several stands of trees and dense vegetation such that potential for nuisances due to light, noise, fumes, etc. is very low and provision of the waived items would have little or no effect on such impacts and is therefore also compliance with Compatibility Guideline Policies 3. , 3. , 3. , 3. 7 and 3. 8; and

WHEREAS, the Commission further finds that the Commission finds that the waiver will not violate the Comprehensive Plan because, as explained above, the buffer, berm and screen would not enhance its compatibility and the elevations accompanying this application show that it will be an attractive building and well landscaped, particularly at the front (the north property line) where it faces Johnsontown Road and Trade Port Drive which are the only points where there is visual access to the site, and the site will be surrounded on the east, west and south by an eight foot chain link fence for security purposes, and the rural character and rural flavor of the residences and roadway corridors in this area will be protected and therefore is in compliance with Compatibility Guidelines 3. , 3. , and 3. , and the location of the site with ready access to the Greenbelt Highway and the Gene Snyder, is appropriate and in compliance with Marketplace Guideline 6. 8 and the truck traffic utilizing this facility will use Trade Port Drive, the Greenbelt Highway and Gene Snyder Freeway rather than Johnsontown Road (particularly to the east) and thus will not have an adverse impact on the residential areas and their streets in compliance with

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Mobility/Transportation Guideline 7.1 , and. roadway improvements on the Johnstown Road frontage are provided in compliance with Mobility/Transportation Guideline 7.2 and the provision of a berm would impede the natural surface water flow from the site and otherwise the proposed improvements do not have any negative impacts on the watershed and the adjacent regulatory floodplains and that after review MSD has granted preliminary approval of the Plan in compliance with Livability/Environment Guidelines 10.1 , 10.2, 10.7 and 10. 10 and best management practices will be utilized during construction to protect the adjacent stream corridors in compliance with Guideline 10. 12; and

WHEREAS, the Commission further finds that the extent of the waiver is the minimum necessary to afford relief to the Applicants because the parking that encroaches onto the required buffer is, in fact, trailer storage and trailers which do not have engines or brakes which can generate deposits that affect water quality and, unlike regular parking, do not involve daily relocation and all other requirements are met on site; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested waiver to permit a waiver of Chapter 5, Part 5.4.B.1 to allow parking and maneuvering to encroach into the 50-foot required landscape buffer area adjacent to R-1 zoned land as well and to eliminate the required six-foot berm and three-foot screen.

The vote was as follows:

YES: Commissioners Ernst, Carlson, Storm, Wells-Hatfield, Abstain, Howard, and Hamilton.

NO: No one.

NOT PRESENT: Commissioners Fleischaker, Blake and Queenan.

ABSTAINING: No one.

Detailed District Development Plan

On a motion by Commissioner Howard, the following resolution was adopted:

RESOLVED, That the Louisville and Jefferson Planning Commission does hereby **APPROVE** the Detailed District Development Plan for Case No. 8571, subject to the following binding elements.

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1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. The development shall not exceed 378,000 square feet of gross floor area.
3. Signs shall be in accordance with Chapter 8.
4. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
5. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
6. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit is requested:
 - a. The development plan must receive full construction approval from Louisville Metro Department of Inspections, Permits and Licenses, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - c. A minor plat or legal instrument shall be recorded creating the lot lines as shown/dedicating right-of-way. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of the approved plans to the office

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responsible for permit issuance will occur only after receipt of said instrument.

7. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
8. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.
9. **The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.**
10. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the July 5, 2007 Planning Commission meeting.
11. At the time a building permit is requested, the applicant shall submit a certification statement to the permit issuing agency, from an engineer, or other qualified professional stating that the lighting of the proposed development is in compliance with Chapter 4 Part 1.3 of the land development code and shall be maintained there after. No building permits shall be issued unless such certification statement is submitted. Lighting shall be maintained on the property in accordance with Chapter 4 Part 1.3 of the land development code.
12. There shall be no direct access to Johnsontown Road until roadway improvements are completed by Metro Public Works to provide a three-lane section along the property frontage.

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13. The Applicant shall contribute \$12,600.00 to Metro Public Works for roadway improvements, and said payment shall be made prior to construction plan approval.
14. The Applicant shall submit a landscape plan for staff review and approval which shall include enhanced landscaping along Johnstontown Road to mitigate the waivers granted to eliminate the required berm, six foot continuous fence or hedge and encroachment into the perimeter LBA. Landscaping along the Johnsontown Road frontage shall be irrigated.

The vote was as follows:

YES: Commissioners Ernst, Carlson, Storm, Wells-Hatfield, Abstain, Howard, and Hamilton.

NO: No one.

NOT PRESENT: Commissioners Fleischaker, Blake and Queenan.

ABSTAINING: No one.